No. 82-1322

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA AND
ROSCOE L. EGGER, JR., COMMISSIONER OF
INTERNAL REVENUE SERVICE, PETITIONER

v.

WILLAMETTE INDUSTRIES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

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In its brief in opposition, respondent asserts that: (1) we seek review in this case to correct a factual finding by the court below; (2) the documents it seeks are compilations of data in any event and therefore not barred from disclosure even under our interpretation of Section 6103 of the Internal Revenue Code of 1954 (26 U.S.C.); and (3) the decision below does not conflict with *King* v. *IRS*, 688 F.2d 488 (7th Cir. 1982). None of these arguments withstands analysis.

1. The issue presented in this case is a pure question of law. Even if the court of appeals were correct that the return information sought by respondent is non-identifying once it is edited, the disclosure of such information is barred as a matter of law by the plain language of Section 6103. In our view, no one can obtain access to raw return information

unless Section 6103 specifically allows such a disclosure *or* the raw return information is changed in form, by amalgamation into statistical data, and, even in this new form, cannot identify a particular taxpayer.

Contrary to respondent's characterization of our argument (Br. in Opp. 7), we do not seek review of the so-called "factual finding" that the return information in this case is non-identifying, once it is edited. Our position, accepted by the Seventh Circuit in *King*, finds support in the fact that neither the courts nor the Internal Revenue Service can adequately assess the risk of identification of return information on an ad hoc basis. Accordingly, Section 6103 alone should regulate access to return information, and the Haskell Amendment (26 U.S.C. (& Supp. V) 6103(b)(2)) to this statute, permits disclosure only of "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer," a statutory phrase that excludes raw return information. *King* did not hold, as respondent suggests (Br. in Opp. 4-5), that the documents in issue there were nondisclosable because there was a risk of identification. Rather, the court held that that raw return information is per se nondisclosable as a matter of law because editing can never guarantee the absence of such a risk.

2. Respondent further contends (Br. in Opp. i, 5, 8-9) that our interpretation of the Haskell Amendment was sustained in fact because the court of appeals found the return information at issue to be a "compilation of data" (Pet. App. 9a). But this is not the case. The return information sought by respondent has been held disclosable by the decision below in its pure, raw form. There has been no amalgamation of the various facts regarding tract size, kind of timber, sales price, etc., into new statistics. All the specific details of indivdiual sales would be available to respondent as discrete, separate sets of information. It is

only because respondent sought return information drawn from multiple sources that the court below posited its alternative holding that there was a "compilation of data" here (Pet. App. 9a). That sort of "compilation" nevertheless leaves the return information in a raw form, and discloure of it is contrary to Section 6103. The court of appeals' fundamental error was its assumption that the statutory term "data in a form" is equivalent to raw return information. In our view, raw return information can become "data" when it is amalgamated with other return information to produce a new and distinct statistical body of information.

3. Finally, respondent argues (Br. in Opp. 8-10) that there is no conflict between this case, which relies upon *Long* v. *IRS*, 596 F.2d 362 (9th Cir. 1979), cert. denied, 446 U.S. 917 (1980), and the decision in *King*. But the court in *King* effectively refuted this contention. In reversing the district court which had likewise relied on *Long* (49 A.F.T.R.2d 839, 841 (N.D. Ill. 1981)), the Seventh Circuit in *King* explicitly acknowledged the conflict. It stated (688 F.2d at 488 n.*):

> Because this opinion creates a conflict with the opinions of the Ninth and District of Columbia Circuits in *Long v. I.R.S.*, 596 F.2d 362 (9th Cir. 1979), *cert. denied*, 446 U.S. 917, 100 S. Ct. 1851, 64 L. Ed. 2d 271 (1980), and *Neufeld v. I.R.S.*, 646 F.2d 661 (D.C. Cir. 1981), it was circulated under Circuit Rule 16(e) to all active judges, with the exception of Circuit Judge Cudahy, who did not participate in consideration of the opinion. No judge requested a rehearing *en banc*.

Thus, *King* adopts a legal test regarding disclosure of return information that is directly opposed to the test adopted by the Ninth Circuit here and in *Long* and by the District of Columbia Circuit in *Neufeld*. As we have noted (Pet. 8-9), the decision below threatens to compromise the

special confidentiality accorded by Section 6103 to the information provided by many millions of taxpayers. Section 6103 does not apply an "apparent risk of identification" test for disclosure. To the contrary, it demands that no raw return information be disclosed except pursuant to its limited and detailed provisions. Accordingly, respondent has no right to this personal return information simply because there "appears" to be no risk of identification.[1]

CONCLUSION

For the reasons stated above and in our petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

REX E. LEE
Solicitor General

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[1]Respondent attempts to characterize its FOIA suit as vindicating a public purpose of disclosing "valuation opinions" by the IRS (Br. in Opp. 2-3). There is, however, nothing confidential about Internal Revenue Service valuation practices. The manual regarding such practices was provided to respondent (Pet. App. 12a n.1).

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